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<u>A Denial Program</u>	

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1. A denial program is made necessary by the following factors:

a. Scientists whom the military authorities sponsor for voluntary application for immigration may be turned down for failure to meet various requirements for immigration. Yet the fact that these persons had been approved for immigration by military authorities would be evidence of their denial value. Moreover, the rejection of such persons for permanent immigration might be tentative pending further investigation or observation. It would be well, therefore, to have a concomitant procedure for denial.

b. The element of time is paramount in the denial program, whereas the requirements of immigration are such that considerable investigation and thought must take place before entry is actually permitted on a permanent basis, or even on a visitor's basis.

c. The voluntary program is based on the admission of "a limited few" (in the President's words), whose work in the United States would promote scientific research in irreplaceable ways and would be a bona fide enrichment of American life. The National interest, however, requires the removal of a larger number of scientists and technicians from Germany--at least so as to prevent their carrying on prohibited research within Germany as well as in other zones and areas not under United States control.

d. Many important scientists will be unwilling to come to the United States as immigrants, or to stay here, either because they do not wish to leave Germany or because they wish to go to some other area. If the denial purpose is important, these people should be made to move regardless of their desires.

e. The legal basis on which the current prisoners of war and interrogation programs are being carried on may cease to exist either by cessation of the war emergency or by international event of some other kind.

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This would leave a large number of persons in the denial categories, or in the categories of persons needed to work for us in the National interest, without legal restraint against returning to Germany or going to some other area. No exit visas or documents are necessary to departure from the United States; and, of course, no one lawfully here can ordinarily be restrained or curtailed in his movements within the country.

f. Persons who have passed the immigration requirements and enter as visa immigrants may turn out to have lied, or otherwise become security menaces. So long as they are enemy aliens, it may be legally possible (although this is not clear at the present stage of writing) to treat them then as denial cases.

g. Other forms of legal entry, such as visitor's visas, are no substitute for the military denial. They cannot be substitutes for long-term entry; they are not permissible for working--unless Immigration waives the violation; once here the visitors may prove to know so much that we cannot let them leave.

2. The foregoing types of cases relate primarily to enemy aliens who, under international law, the Armistice terms, the rules of the Occupation authorities, and domestic law, may be treated on a military basis. There are, however, citizens of "liberated" countries who, voluntarily or involuntarily, should become part of a denial program. This, however, is a separate question and must be treated separately. Yet it may be noted in passing that the cases involved may fall under the heads of

- (a) persons who would leave with the consent of their own government; and
- (b) persons who are running away from their own government; as well as cases of
- (c) persons who should be, more or less, removed forcibly from Germany, for reasons similar to the other cases, regardless of their nationality. The decisions on these cases must follow the closest examination of all relevant legal and policy considerations; the subject should not be gone into by this committee without thorough prior examination by SWNCC, JCS, and the Departments concerned.

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3. The temporary visa entry can and should be used as a first-stage preceding quota immigration entry--in cases where we have determined that there is no substantial security problem, where the danger of the person's leaving the country on his own is remote and where it would be conducive to better work to have him come in as a visitor rather than in military custody. It is a probationary measure to permit us to watch the man here after we have determined by investigation in Germany that he would be eligible, security-wise, for an immigration visa. It is an act of caution giving us control for the movements of the immigrant should we wish to exercise control. It will require special approval of the Attorney General for working. But it must not be a boomerang against us. Experience shows that expulsion of visitors who overstay their visitor's visa is frequently most difficult.

4. Since the denial program is premised on the existence of certain legal and security obstacles to the granting of any immigrant or visa status, consideration should be given to the following two factors:

a. The provision of grounds, legally unavailable, now and after the war emergency is passed, of any continued detention.

b. Possibility of a continued military custody and similar purely military control measures for all cases over a long period.

The first of these questions raises delicate and important constitutional and legal problems which should be answered only by the Secretary of State and the Attorney General after exploration by the legal authorities of the Departments concerned. For example:

(1) What guarantees can be provided to assure that after the peace treaties are signed, or perhaps even before, habeas corpus will not be obtained successfully by or on behalf of these individual persons in consequence of which they will be free to move and act as they wish?

(2) How can we successfully prevent security control measures from being violated and what punishments may be legally provided for violation of security regulations?

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(3) With respect to even temporary probationary detention, to what extent are there legal difficulties in the case of persons not actually prisoners of war? How can we guarantee the continued presence in the United States, or under control, as against Argentine or Russian blandishments, of German employees allegedly here as field employees on per diem?

Thought must, therefore, be given to the selection of the specific place for the concentration of such persons, voluntarily or not, such as a military base in the Pacific not under the civil jurisdiction of the courts. Whether even such a solution is perfect is subject to doubt; but its possibilities should be canvassed.

5. With respect to the conditions of detention, considerable thought should be given to the following factors:

a. Whether these persons should be engaged outside Germany in types of research actually prohibited to them within Germany by ACC legislation, because we may have to answer attacks and criticisms from the public or from foreign countries, or because in the event of ultimate failure to make the program stick, the persons in question will actually be free to return to Germany or to go elsewhere.

b. The provision of incentives to induce the persons involved to make scientific and technical contributions by continuing to work at selected tasks. It may thus be made necessary or permissible that the close family of the scientist be brought with him, that conditions of work be good and the pay be satisfactory, etc.

c. The extent to which research facilities, etc. should be provided by the military authorities as well as the extent to which other employment not in the scientific field at all would be more desirable for the persons under detention.

6. It is clear that more expert consideration would have to be given to these operating problems. The research authorities of the Armed forces should, by subcommittee, propose a draft program, to be gone over by the legal and security subcommittees, and after

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consultation with appropriate officials of all three Services on the foregoing lines. Particularly they should consider:

a. Selection of areas outside the authority of the Federal courts of the United States where such detention can take place.

b. Provision of research and other necessary facilities at such installations.

c. Preparation of schedules and projects for the persons under detention in the United States and outside the United States.

7. It is recommended, therefore, that on the assumption that JIOA will be instructed to carry out the program, if approved, the Joint Intelligence Committee

a. Be informed in writing by JIOA

(1) that a denial program is necessary;

(2) that its legal and political bases must be established by the Attorney General and the Secretaries of State, War and Navy;

(3) that the program would take the form indicated above.

b. Be requested to submit a plan to the Joint Chiefs of Staff and CMNCC along the foregoing lines to be, in turn, submitted to the appropriate heads of the Departments for legal opinion and policy decision.